

Appl. No. 10/054,825
Reply Date: September 11, 2007
Reply to Office Action of June 14, 2007

•• REMARKS/ ARGUMENTS ••

The Office Action of June 14, 2007 has been thoroughly studied. Accordingly, the following remarks are believed to be sufficient to place the application into condition for allowance.

Claims 1-11 are pending in this application.

Claims 1-8 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,699,228 to Chmielewski et al.

Claims 9 and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Chmielewski et al. in view of Japanese reference no. 1996-196565 to Onishi et al.

Claims 1-4 and 9 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 3-5 of U.S. Patent No. 6,921,394.

For the reasons set forth below, it is submitted that all of the pending claims are patentable over the prior art of record and therefore, each of the outstanding prior art rejections of the claims should properly be withdrawn.

Favorable reconsideration by the Examiner is earnestly solicited.

The Examiner has relied upon Chmielewski et al. as disclosing:

...a diaper, as shown in figure 1, comprising a primary absorbent batt assembly 34, a pair of barrier cuffs 501, and a supplementary absorbent batt assembly 70. The primary absorbent batt assembly 34 has a body facing surface sheet 30, a garment facing surface sheet 32, a front waist region 22, a rear waist region 24, and a crotch region 26. The barrier cuffs 501 have a proximal edge portion 304 and a distal edge portion 503, and extend along transversely opposite sides of the primary absorbent

Appl. No. 10/054,825
Reply Date: September 11, 2007
Reply to Office Action of June 14, 2007

batt assembly 34 so as to rise up from the body facing surface, as shown in figure 2. The supplementary absorbent batt assembly 70 has a body facing surface 704 and an opposite surface 607, as shown in figure 2. The supplementary absorbent batt assembly 70 also has a proximal end portion 724 and distal end portion 728, as shown in figure 1, the proximal end portion 724 lying [in] the front waist region 22. The distal end portion 728 is spaced upwardly from the primary absorbent batt assembly 34 to define a pocket opening 80 when under tension from, and therefore supported by, the barrier cuffs 501, as shown in figure 3 and described in column 3, lines 39-44.

The Examiner takes the position that:

It would have been obvious....to space the opposite side edges of the supplementary absorbent batt assembly being spaced apart upwardly from the body facing surface of the primary absorbent batt assembly, since the applicant has not shown that this configuration serves any stated purpose or solves any stated problem, and it appears the invention would perform equally well with the opposite side edges of the supplementary absorbent batt assembly being spaced slightly apart from or attached to the body facing surface of the primary absorbent batt assembly, since either configuration allows for the formation of a pocket opening between the supplementary and primary absorbent batt assemblies, thus allowing the invention to perform equally well either way.

On page 2 of the Office Action under the *Response to Arguments* section the Examiner has stated:

With respect to the curvature of the upper and lower absorbent structures of Chmielewski, it is noted that Chmielewski discloses that the curvature of the upper and lower absorbent structures about the longitudinal axis may be omitted from the garment. In order to still provide a pocket between the upper and lower absorbent structures, as shown by Chmielewski in figure 6, it would be obvious to space the upper absorbent structure above the lower absorbent structure to provide the pocket without any curvature to the absorbent structure.

Appl. No. 10/054,825
Reply Date: September 11, 2007
Reply to Office Action of June 14, 2007

The Examiner's presentation of Chmielewski in the above paragraph is very inaccurate. The portion of Chmielewski which states that the curvature is optional reads as follows:

While the preferred embodiments have been described in connection with imparting a curvature to either the upper or lower absorbent structures, the curvature, though preferred, may be omitted from the absorbent garment and the garment will *still generally prevent* the forward migration of BM. Even without the curvature, the preferred embodiments will *generally prevent* BM from soiling the genitals and isolate the urine from BM to reduce the incidence of diaper rash.

Note that Chmielewski admits that there is some functionality lost when the curvature is omitted and that the garment will only "generally prevent" forward migration of BM.

At best it can be concluded that the opening of the pocket either never develops properly absent the curvature or the leading edge of the upper absorbent structure functions somewhat like a dam to inhibit migration of the BM.

In either event, Chmielewski clearly indicates that there is a loss or decrease in function when the curvature is omitted.

The Examiner's reference and reliance upon Fig. 6 as suggestively showing an embodiment in which the curvature of the upper and lower absorbent structures is grossly misleading, since Fig. 6 is merely a longitudinal cross-sectional view of the diaper of Fig. 1. This view does not, and is not intended to show the curvature.

However, it is pointed out that Fig. 2 which is a transverse cross-sectional view of the diaper of Fig. 1, does in deed show the curvature, which would necessarily be present, howbeit, not shown in Fig. 6.

Appl. No. 10/054,825
Reply Date: September 11, 2007
Reply to Office Action of June 14, 2007

Thus, the Examiner's basis for the above conclusion is unfounded and the Examiner's presentation is misleading. There is no basis for concluding that omitting the curvature of the upper and lower absorbent structures would result in the pocket configuration shown in Fig. 6.

Moreover, there is no teaching in Chmielewski as to how to space the upper absorbent structure above the lower absorbent structure other than the structure and configuration shown in Fig. 2 even if one were to omit the curvature.

Further on page 2 of the Office Action under the *Response to Arguments* section the Examiner has stated:

In response to the applicant's arguments that Chmielewski provides no teaching that the barrier cuffs support the curvature of the upper and lower absorbent structure, it is noted that Chmielewski discloses in column 3, lines 39-44, that the contraction of the barrier cuffs encourage the upper absorbent structure to rise up.

Column 3, lines 34-47 of Chmielewski reads as follows:

Optionally, a second or inner pair of inboard waste containment flaps are positioned at the lateral side edges of the upper absorbent structure. The inner pair of waste containment flaps are, like the outer pair of waste containment flaps, elasticized at distal ends thereof. The elastics tend to contract when the tensile forces are removed. The contraction of the inner pair of waste containment flaps tends to encourage the rear edge of the upper absorbent structure to rise above the lower topsheet, forming an ***arched-shaped pocket opening***. The pocket opening forms an entrance to a waste containment pocket formed between the upper absorbent structure and the components of the absorbent garment therebeneath.

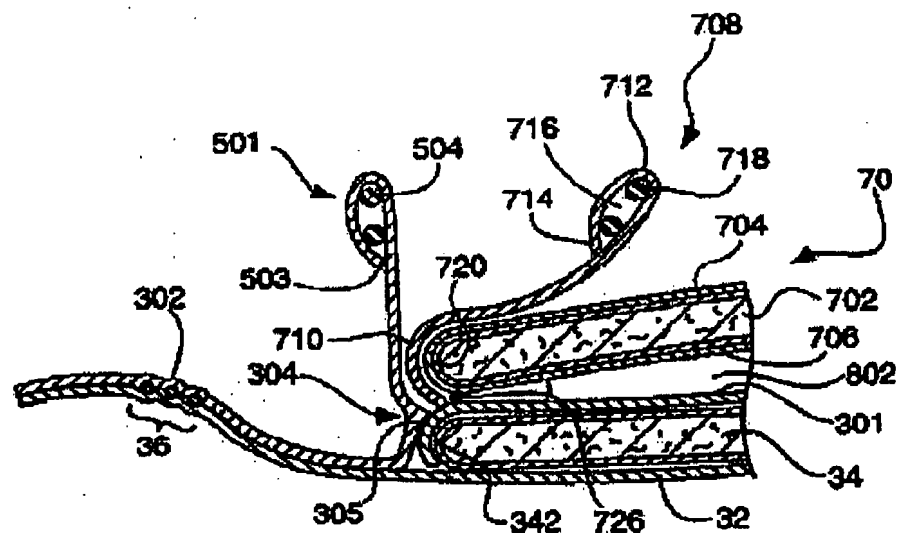
It is specifically noted that this portion of Chmielewski teaches that "[t]he contraction of the inner pair of waste containment flaps tends to encourage...[the formation of]... an ***arched-shaped pocket opening***."

Appl. No. 10/054,825
 Reply Date: September 11, 2007
 Reply to Office Action of June 14, 2007

This phenomenon can be easily understood from studying Fig. 2 of Chmielewski and realizing that as leg gathers 708 are pulled up by tension in elastic members 718, they pull against the point where they are attached to the lower topsheet of the lower absorbent structure which is beneath and inward from the lateral side of the upper absorbent structure. As a result, and as expressly disclosed, the contraction of the elastic members 718 "tends to encourage...[the formation of]... an *arched-shaped pocket opening*."

For the Examiner's convenience, Fig. 2 of Chmielewski is reproduced as follows:

FIG. 2



Appl. No. 10/054,825
Reply Date: September 11, 2007
Reply to Office Action of June 14, 2007

As can be appreciated, the teachings of Chmielewski at column 3, lines 39-44 actually support applicants' position and demonstrate the structural and functional differences between Chielewski and applicants' claimed invention.

Finally on page 2 of the Office Action under the *Response to Arguments* section the Examiner has stated:

It is further noted that the attachment of the upper absorbent structure of Chmiclewski or either the topsheet of the barrier cuffs would be obvious to one of ordinary skill in the art, since the location of attachment solves no stated problem and serves no particular purpose, and both attachment locations result in functionally equivalent structures.

First as noted above, Chmielewski teaches that, in the absent of providing a curvature (by the structural arrangement which is different from that claimed by applicants), the resulting structure would **"generally prevent"** the forward migration of BM.

This indicates some loss in function.

As can be understood from a simple review of Fig. 2 of Chmielewski, should waste matter migrate or be deposited near the lateral side edges of the upper and lower absorbent structures, such waste matter would not likely migrate to the rear of the pocket of Chmielewski because there is no clearance space between the upper and lower absorbent structures near the lateral side edges. In contrast, as shown in applicants' Fig. 2, the clearance space between the upper and lower absorbent batts is substantially uniform across the lateral width of the pocket. Thus, waste materials are not inhibited from migrating to the rear of the pocket due to the structural configuration of applicants' article.

Appl. No. 10/054,825
Reply Date: September 11, 2007
Reply to Office Action of June 14, 2007

These structural and associated functional differences establish patentable differences between Chmielewski and the present invention, including solving the problem with limited clearance space at the lateral side portions of the pocket of Chmielewski, it being noted that Chmielewski expressly indicates that this problem would even be worse show the curvature be omitted.

Based upon the above, it is submitted that Chmielewski et al. fails to teach or render obvious the structure and related or associated function of applicants' claimed invention.

The Examiner as relied upon Onishi et al. as teaching a second supplementary absorbent batt assembly located in the rear waist region and smaller than the supplementary absorbent batt assembly.

In combining the teachings of Chmielewski et al. and Onishi et al. the Examiner takes the position that:

It would have been obvious to one of ordinary skill in the art at the time of invention to construct the diaper of Chmielewski with a secondary supplementary absorbent batt assembly, as taught by Onishi, to trap waste and minimize contact of the wearer of the diaper.

The Examiner's further reliance upon Onishi et al. does not address or overcome the differences between Chmielewski et al. and applicants' claimed invention.

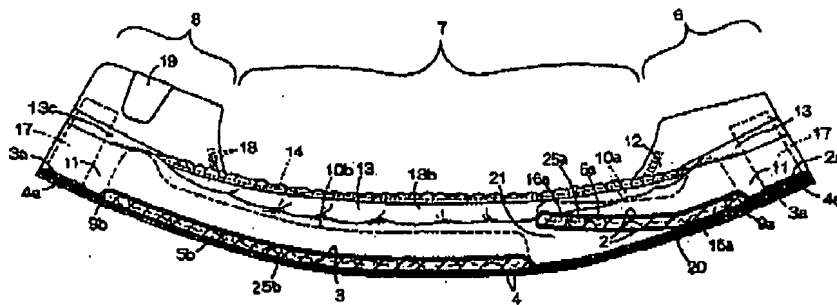
With regard to the nonstatutory double patenting rejection, it is noted that in U.S. Patent No. 6,921,394 the first absorbent panel and the second absorbent panel are not situated, or claimed, so as

Appl. No. 10/054,825
 Reply Date: September 11, 2007
 Reply to Office Action of June 14, 2007

to meet the requirement in the present application of "said supplementary absorbent batt assembly being placed upon said body facing surface of said primary absorbent batt assembly."

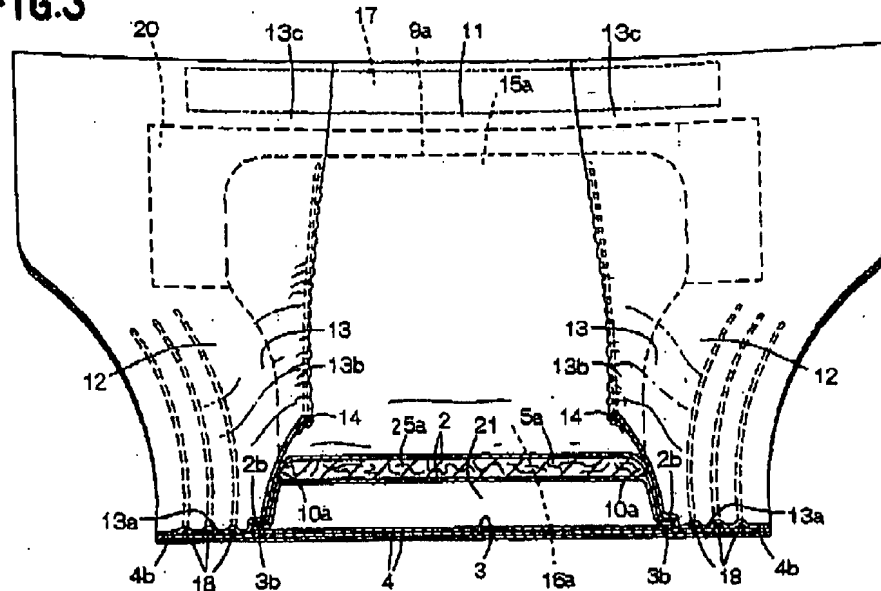
Figs. 2 and 3 of U.S. Patent No. 6,921,394 are provided below and show that the supplementary absorbent batt assembly is **not** placed upon the body facing surface of the primary absorbent batt assembly as required by the applicants' pending claims.

FIG.2



Appl. No. 10/054,825
Reply Date: September 11, 2007
Reply to Office Action of June 14, 2007

FIG.3



Based upon the above distinctions between the prior art, properly considered as a whole and the present invention, and the overall teachings of the prior art, properly considered as a whole, it is respectfully submitted that the Examiner cannot rely upon the prior art as required under 35 U.S.C. §103 to establish a *prima facie* case of obviousness of applicants' claimed invention.

It is, therefore, submitted that any reliance upon the prior art as would be improper inasmuch as the prior art does not remotely anticipate, teach, suggest or render obvious the present invention.

Appl. No. 10/054,825
Reply Date: September 11, 2007
Reply to Office Action of June 14, 2007

It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is not novel and neither anticipated nor obvious over the teachings of the prior art and the outstanding rejection of the claims should hence be withdrawn.

Therefore, reconsideration and withdrawal of the outstanding rejection of the claims and an early allowance of the claims is believed to be in order.

It is believed that the above represents a complete response to the outstanding Official Action and reconsideration is requested.


If upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved; the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of

Appl. No. 10/054,825
Reply Date: September 11, 2007
Reply to Office Action of June 14, 2007

time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,


Michael S. Gzybowski
Reg. No. 32,816

BUTZEL LONG
350 South Main Street
Suite 300
Ann Arbor, Michigan 48104
(734) 995-3110